

**California Department of Transportation
Native American Advisory Committee
Quarterly Meeting Minutes
October 11, 2006**

Chairman Joseph Myers called the meeting to order at 9:10 a.m.

Welcome and Introduction: Chairman Myers welcomed everyone.

Approve Minutes: Member Mazzetti wanted clarification on the second page of Mr. Garth Hopkins' name. Member Mazzetti moved to approve the minutes as is, second by member Lorenda Sanchez. Minutes were approved.

Adopt Agenda: The Native American Advisory Committee (Committee) adopted the agenda.

Roll Call: Committee members in attendance were: Gary Mulcahy, alternate for Mark Franco, Bo Mazzetti, Joseph Myers, Dave Nenna, Lorenda Sanchez, Greg Nesty, alternate for Garth Sundberg, and Tilford Denver, alternate for LeLand Watterson.

Director's Representatives in attendance were: R. Gregg Albright, Deputy Director of Planning and Modal Programs; Joan Sollenberger, Division Chief of Transportation Planning; Sharon Scherzinger, Office Chief of Regional and Interagency Planning; Cynthia Gomez Branch Chief, Native American Liaison Branch.

Others in Attendance: Penny Gray, Caltrans Federal Transportation Management Program; Jo Sanford, Caltrans District 8; Lee Bigwater, CA/NV-TTAP; Stacy Dixon, Susanville Indian Rancheria; Richard Olson, Caltrans District 3; Mark Bobotis, Caltrans District 11; Greg King, Caltrans Environmental; Tina Biorn, Caltrans Environmental; Jane Clough-Riquelme, San Diego Association of Governments (SANDAG); Sue Kiser, Federal Highway Administration (FHWA); Andrew Masiel, Pechanga Band of Luiseno Indians; Richard Myers, Yurok Tribe; Kathleen Sartorius, Caltrans District 1; Olivia Fonseca, Caltrans Civil Rights; Maria Rodriguez, Caltrans District 10; Sandra Rivera, Caltrans District 2; Matthew Leivas, Sr., Colorado River Indian Tribe; Mario Orso, Caltrans District 11; Jacque Hostler, Hoopa Valley Tribe; Clifford Lyle Marshall, Hoopa Valley Tribal; Kelly Myers, National Indian Justice Center (NIJC); Carolyn Yee, Caltrans Native American Liaison Branch; Valarie Smith, Caltrans Native American Liaison Branch; Jila Priebe, Caltrans Native American Liaison Branch.

OLD BUSINESS

Follow Up: Tribal Employment Rights Ordinance (TERO): Ms. Kelly Myers, Staff Attorney for the National Indian Justice Center (NIJC), gave a follow up on the TERO issue. She mentioned that the Committee members along with the Native American Liaison Branch (NALB) have been working very hard to resolve this issue. She mentioned since the last NAAC meeting there have been several meetings regarding the Department of Transportation (Caltrans) Legal liability for putting TERO in state contracts. Caltrans Legal Division issued an opinion, stating that the California Constitution prohibits state agencies from granting preferential treatment in the operation of public employment, contracts, or education. The Legal Division referred to Proposition 209 and primarily two Federal court cases, the Malabed v. North Slope Borough and Montana v. King. At the last NAAC meeting these court cases were discussed and the Committee concluded that Proposition

209 did not prohibit CalTrans from employing TERO in its contracting; therefore, NAAC requested that Ms. Myers to respond to Caltrans Legal Division's opinion.

Ms. Myers also mentioned that Chairman Myers, Member Mazzetti, Caltrans staff, and she met with the Director, Will Kempton (Director). The Director informed them that Caltrans Legal Division sent their opinion to the Attorney Generals (AG's) Office for their input and opinion. The Director also directed the Legal Division to schedule a meeting between the Committee, NALB and her to discuss the issue. Ms. Myers stated that as of today there has been no formal meeting with the Legal Division; she stated Mr. David McCray had contacted her by phone, however, the Legal Division only wanted to meet with her. She stated that she did not deem that to be appropriate, since she was not a member of nor the representative for the Committee.

Ms. Myers informed the Committee that even though there has not been a formal meeting, she did prepare a response (a memo) discussing the issues and court cases that the Legal Division had based their legal opinion on. Her response had no impact on the Legal Division's stance on prohibiting TERO in the contracting provisions for projects near reservations. Pursuant to federal law, Caltrans is not required to include TERO in contracts off or near reservation projects; however they are not prohibited based upon Supreme Court precedent and 9th Circuit Court cases from allowing TERO provisions in their contracts on or near the reservation.

Ms. Myers emphasized TERO conflicts will continue between Tribes and Caltrans. She explained Caltrans' legal opinion is based on two cases that involve very different situations; North Slope Borough deals with an Alaska case, where most of the tribal lands are not deemed Indian country and the tribes operate as corporations, and they are not treated the same way under federal Indian law. The second case Montana v. King, involves a right of way that is exclusively under state jurisdiction.. In California, Caltrans would have the burden of proving that the rights-of-away are exclusive to the state and not concurrent with the tribe in order for this case to be precedent.

Member Mazzetti specified there are really two issues; 1) the state needs to define "minority group" and 2) Proposition 209 is a state regulatory law, therefore, not applicable within reservation boundaries. Member Mazzetti also mentioned that maybe its time to sit down with Bureau of Indian Affairs (BIA) and figure out who owns these rights of ways.

Mr. Albright expressed his extreme frustrations for not resolving this issue after several suggested options were tested. Meantime he recommended that Caltrans along with guidance from the Committee create an Interim Policy by 1) having Legal clarify acceptable options and 2) consult with TERO Tribes and other interested parties on an acceptable version.

Ms. Myers suggested a third option; the Tribes could contact the AG's Office directly to obtain a legal opinion on whether Caltrans was prohibited by Proposition 209 to apply TERO.

Mr. Leivas agreed since government-to-government relationship did not appear to exist. Mr. Albright praised Ms. Myers on her past heroic attempts to resolve this issue.

Chairman Myers stated that the Committee has done its job in terms of getting a response to Caltrans Legal Division opinion. It's up to the Legal Division to explain their position, how they came up with this opinion. Furthermore, the Committee would like to know where the opinion is.

Legislative Report (Informational): Ms. Cynthia Gomez informed the Committee that their packets contained information on four proposed legislation; she mentioned all four bills were vetoed. Assembly Bill (AB) 2762 which would have authorized by a joint powers agreement allowing 16 Southern California Tribes to become voting members with SCAG. The Governor directed the Office of Planning & Research's (OPR) to work with the tribes to resubmit the bill next year. AB 1747 would have authorized the Rumsey Tribal Government to enter into a joint powers agreement with Yolo County. AB 2399 would have authorized tribal state gaming compacts with Agua Caliente Band of Cahuilla Indians. Senate Bill (SB) 1395 would amend Public Resource Code on environmental quality regarding Native American Tribal coordination and consultation process.

There was a few other announcements: A Federal Register announcement explaining the Federal Transit Administration (FTA) was promoting a new Tribal Transit Grant Program where Tribes could receive direct funding for their transit programs; President Bush's intentions to nominate Carl Joseph Artman of Colorado as Assistant Secretary of the Interior for Indian Affairs; and proposed corrections to H.R. 5689 for technical amendments to Safe Equitable Flexible Efficient Transportation Equity Act (SAFETEA-LU) on the IRR Program was submitted by Tribes through their attorneys.

Highway Landscaping Subcommittee Report: There was no new information to report.

NAAC Motion Re: Federal Highway Administration (FHWA) Follow Up: Ms. Sue Kiser, FHWA Director of Planning and Right of Way and Ms. Sharon Scherzinger, gave a joint presentation on the roles and responsibilities of regional transportation planning agencies, state, and FHWA on consultation and coordination with Tribal Governments.

Ms. Scherzinger explained a large portion of planning responsibilities were now delegated to regional transportation agencies, but Caltrans still retained federal authority and responsibilities to ensure consultation and coordination efforts with Tribal governments were done in accordance with federal statutes and mandates in both the planning and programming processes.

Ms. Kiser clarified the FHWA has an evaluation process for Metropolitan Planning Organizations (MPOs); every two years FHWA reviews MPO's planning and programming process; through this review FHWA can verify that the MPOs have developed its State Transportation Improvement Program (STIP) in accordance with all federal requirements. Furthermore, the MPO's have a self-certification process to ensure public participation has been done accordingly in the planning process.

Member Mazzetti inquired whether FHWA relied solely on the MPO's and Regional Transportation Planning Agencies' (RTPAs) self-certification processes concerning tribal consultation.

Ms. Kiser reiterated FHWA makes its evaluations based upon an MPO's everyday involvement/interactions with Caltrans and the MPOs in reviewing MPO's self certification process on consultation and public involvement. She specified FHWA did not have an established certification process for RTPAs, but worked closely with Caltrans to identify RTPAs consultation process.

Indian Reservation Road Program (IRR) Coordinating Committee Update Report: This report was moved for discussion at the next meeting.

IRR Data Collection- Copy of MEMO, BIA Letter: This report was moved for discussion at the next meeting.

NEW BUSINESS

Southern California Council of Governments (SCAG) Presentation: Mr. Andrew Masiel, Sr., gave an updated progress report on SCAG. He mentioned that he was the representative that sits on the SCAG board as a voting member representing 16 tribes from Southern California. The Tribes and SCAG compromised that there would be one person representing the 16 tribes who has full voting power. Part of the compromise was also establishing the Native American Transportation Group, with three Subcommittees: Transportation, Administration, and Housing. Mr. Joe Loya is a part of the Housing Subcommittee. Mr. Masiel also mentioned that AB 2762 would have authorized the 16 Tribes in Southern California joint power agreement to become voting members with SCAG; unfortunately the Governor vetoed that bill. Mr. Masiel concluded that he, his constituents, and OPR would be working together to resubmit the bill in January.

San Diego Association of Governments (SANDAG) Presentation: Ms. Jane Clough-Riquelme, SANDAG Tribal Liaison, gave an overview on SANDAG MPO's efforts in working with Tribal Governments in its region, which encompassed San Diego County and 18 cities. She emphasized federal statutes mandated SANDAG develop a Government-to-Government relationship with each individual Tribe. Consequently, the MPO's desire to improve communications and coordination efforts plus strengthen their relationship between Tribes and SANDAG was initiated and accomplished by the SANDAG Executive Committee at the 2002 Tribal Summit.

Humboldt County Association of Governments (HCAOG) Presentation: Ms. Jacque Hostler and Chairman Lyle Marshall from Hoopa Valley Tribe (Hoopa) gave a brief presentation regarding HCAOG. Chairman Marshall mentioned the history of HCAOG, and Hoopa's involvement. He mentioned that Hoopa has over fifty departments and they have the third largest budget in HCAOG. Chairman Marshall also included that Hoopa has over 500 miles of roads, and 139 on the IRR Inventory. Ms. Hostler mentioned that Hoopa has many different projects for improving their roads within the communities. She also mentioned the New Construction Campus Street Project, which would reconstruct downtown Hoopa. The project would improve the water system and fire hydrants, provide sidewalks and pedestrian crossings, increase parking, employment for tribal members, and economic development for the Tribe.

Humboldt County Tribal Transportation Commission (HCTTC) Presentation: Mr. Gregg Nesty gave an overview of the formation of the HCTTC's in Humboldt County. He mentioned that the purpose for creating the Commission was to promote safe and efficient modes of transportation on reservations and surrounding communities. He elaborated HCTTC meetings were initiated in March 2005 and the goal is to serve as a forum for Tribes to address their multitude of transportation issues and concerns (i.e. road improvements/maintenance, multimode, funding, etc). Furthermore, he shared the importance of HCTTC's future goals in training and informing Tribes on the BIA Indian Reservation Road (IRR) Program.

Office of Planning and Research (OPR) Presentation-Updating the General Plan (GP) Guidelines: Mr. Cuauhtemoc Gonzales gave a presentation regarding the GP guidelines update. He stated that the GP guidelines serve as the constitution for all future developments within a geographical area of each city or county. Cities and Counties are required to adopt a long-range growth plan for its region (General Plan). He mentioned that there are different mandated elements within the GP such as: land use, circulation, housing, conservation, open space, noise, and safety

with optional elements, historical and cultural, water, environmental justice, and energy. The 2007 draft guideline update was in a preliminary scoping phase, but hopefully, released for public review in spring and the final draft in summer 2007.

9th Annual National Tribal Transportation Conference: Mr. Lee Bigwater was absent. Ms. Gomez announced the 9th Annual National Tribal Transportation Conference at the Morongo Casino Resort & Spa from November 13-16, 2006.

NAAC Nominations for 2007-2008 Term- Selection/Voting: Ms. Smith handed out voting ballots to each Committee Member and summarized its review and approval process. She concluded a formal letter would be sent to each nominee.

Scheduling NAAC Meeting for Next Year: The Committee scheduled the next meeting for Wednesday, January 10, 2006 at the Woodland Training Center.

Summary of 39th Native American Day Celebration: Ms. Smith and Ms. Yee gave a brief summary on the event along with a selected photographic slideshow. Highlights focused on the Tribal attendance and funds that were raised.

Chairman Myers suggested maybe next year we could have the event in one of the rooms in the Capitol to improve government-to-government relationship with tribes, as well as to prevent seasonal weather difficulties such as summer time heat and fall winds. Ms. Gomez commented that the NALB would find out what the procedure is to reserve a room in the Capitol. Ms. Gomez also praised Chairman Myers and other keynote speakers on their presentations. She specified this year's theme honored the Native American Heritage Commission's 30th Anniversary.

Announcements:

None

Adjournment: Meeting adjourned at 3:45 pm